

88 - 1718

Office - Supreme Court, U.S.

FILED

APR 19 1984

ALEXANDER L. STEVENS,
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

THOMAS JOSEPH DECARLO,

Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Third Circuit.

Edward A. Rudley
1420 Walnut Street
Philadelphia, PA 19102
(215) 735-4062
Counsel for Petitioner

Of Counsel:
Joseph Mellace
142 Bread Street
Philadelphia, PA 19106
(215) 627-0766

QUESTIONS PRESENTED

I. Was Petitioner's 4th Amendment rights violated by the seizure of alleged "loan shark" records purportedly discovered in "plain view"?

II. Was Petitioner's 4th Amendment rights violated by the search of a building not specified in the warrant which was issued to Law Enforcement Officials who mistakenly entered the premises?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	
OPINIONS BELOW.....	2
JURISDICTION.....	3
STATUTORY PROVISIONS INVOLVED.....	
STATEMENT.....	4
REASONS FOR GRANTING WRIT.....	8

I. Petitioner's 4th Amendment rights were violated by the seizure of alleged "loan shark" records purportedly discovered in "plain view".

II. Petitioner's 4th Amendment rights were violated by the search of a building not specified in the warrant which was issued to Law Enforcement Officials who mistakenly entered the premises.

CONCLUSION.....

APPENDIX:

District Court Judgment and
Probation/Commitment Order..... A1

Court of Appeals Judgment Order.. A3

TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Page</u>
<u>Collidge v. New Hampshire,</u> 403 U.S. 443 (1971).....	11
<u>Steel v. United States,</u> 267 U.S. 498 (1925).....	13

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

THOMAS JOSEPH DECARLO,
Petitioner

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI
TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT:

Petitioner seeks a writ of certiorari
to review the judgment of this case by
the United States Court of Appeals for
the Third Circuit.

OPINIONS BELOW

In the United States District Court, although no opinion was filed, Motions to Suppress were denied, and the Court imposed the judgment of sentence (App. A1) from which a direct appeal was taken to the Court of Appeals.

The judgment order of the Court of Appeals (App. 3) was issued on February 28, 1984 and is as yet unreported.

JURISDICTION

A judgment of sentence was imposed by the United States District Court from which direct appeal was taken to the Court of Appeals (App. A1).

The judgment of the Court of Appeals was entered, without opinion, on February 24, 1984 (App. A3). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT

On December 16, 1982, a 11 count indictment was filed charging petitioner and a co-defendant with: (1) conspiracy to make extortionate extension of credits in violation of 18 U.S.C. §829 (Count 1); (2) conspiracy to use extortionate means, here violence 18 U.S.C. §892 (count 2); and (3) participation in the use of violence and threats of violence to collect a loan in violation of 18 U.S.C. §894 (counts 3-7). In addition, the indictment alleged that the two individuals traveled in interstate commerce to commit extortion in violation of 18 U.S.C. §1952 (counts 8-11).

These charges derive from the Government's belief that petitioner was in the business of providing

extortionate credit to various individuals, but specifically to Thomas Castelli.

The most damaging evidence presented against petitioner was purportedly loan shark records which were found in petitioner's apartment over a year earlier. These loan shark records were discovered by members of the Narcotic Unit of the Philadelphia Police Department on January 21, 1981 during a search of petitioner's apartment made pursuant to a warrant.

However, the warrant to search specifically stated that it was for the "residence 11th and Tasker Streets, Southwest corner, property entrance on 11th Street, 2nd and 3rd floors". In spite of this specificity, the Police entered not only the corner property, but the building next door. It was in the latter building, that is,

the building not specified in the warrant, that police found the alleged loan shark records in a brief case.

The police confiscated these alleged records even though the purpose of their search was to discover narcotics. The records themselves do not, on their face, justify a conclusion that they are contraband or evidence of a crime. The police testified at trial that he only suspected these papers to be loan shark records, and that he was not sure of their purpose. He consequently turned them over to the Philadelphia Organized Crime Unit for actual identification and analysis. Thus, while the records were found in the course of the search allegedly in "plain view", the identification as records of criminal activity was not immediately made or apparent. It was

only after further analysis by the F.B.I.
that their true character became obvious

REASONS FOR GRANTING THE WRIT

The actions of the District Court, as affirmed by the Court of Appeals for the Third Circuit are contrary to long established precedents of this Court, and extend the limits of the law controlling search and seizure pursuant to the 4th Amendment of the United States Constitution far beyond the previously recognized boundaries.

In effect, the actions of the District Court of Appeals now permits the warrantless search of a residence not specified in a warrant and which is clearly not the residence referred to in the warrant by a confidential

informant and the seizure of items whose criminal nature can only be ascertained by later analysis.

I. Petitioner's 4th Amendment rights were violated by the seizure of alleged "loan shark" records purportedly discovered in "plain view".

The items seized during the search of Petitioner's residence are not contraband and their criminal nature is not apparent on their face. Rather, it was not until after their seizure that their criminal nature was truly disclosed. Thus, the seized records are not evidence of a crime seized in plain view, as normally happens with narcotics or a weapon, both of which are immediately identifiable. The records seized in this case are only identified after the facts and after further expert analysis as relating to criminal

activity.

The necessity for such later analysis removes these items from the "plain view" exception of the warrant requirements of the 4th Amendment because, at best, their seizure was the sole result of speculation by a Narcotics officer who was searching for illegal drugs originally.

At trial, the Government conceded that the items seized were not items named in the warrant for which seizure was authorized but maintained that the seizure of all items not mentioned in the affidavit and search warrant was lawfully made under the "plain view doctrine". After a hearing, the District Court denied the Motion to Suppress and held that the seizure was valid because the records were in plain view.

There was no justification to seize and look through these papers since no drugs were found in the brief

case from which they were seized. In Coolidge v. New Hampshire, 403 U.S. 443 (1971), This Court held that police may only seize evidence in plain view, so long as they had valid justification for their original intrusion.

Although a law enforcement officer may be legitimately on the premises pursuant to a warrant authorizing the seizure of enumerated, particularly described articles, that legitimate presence may not be converted to a license permitting a general search.

The search and seizure was unreasonable because there was no basis at the time of the seizure to conclude that the items were related to criminal activity. This intrusion into Petitioner's privacy is not authorized by the 4th Amendment of the United States Constitution and therefore the items should

have been suppressed as the fruit of an illegal search and seizure.

II. Petitioner's 4th Amendment rights were violated by the search of a building not specified in the warrant which was issued to Law Enforcement Officials who mistakenly entered the premises.

While the warrant provided for the search of only the corner property set forth and described, the police, in fact, searched and seized articles from the building next store.

Thus, there were in fact, two buildings, 1600 and 1602 South 11th Street, which had separate individuals living in each residence, Investigation by officers would have alerted them to this simple and obvious fact and a warrant could have been obtained for both premises.

It is axiomatic, and founded upon numerous precedents of this Court, that the warrant only authorized

the search of the specific place set forth. Steel v. United States, 267 U.S. 498 (1925).

If the search warrant is for a multiple dwelling building, the warrant must set forth this fact and describe the individual buildings with particularity to preclude the unwarranted search of other units or locations occupied by innocent persons. The failure of the warrant to set forth even the existence of the building in which the items were seized, and the subsequent warrantless search of those premises, required a suppression of the items ultimately found.¹

¹The District Court found that Petitioner had waived the issue of an illegal search and seizure requiring suppression because of the failure of his attorney to timely move for such suppression. It is apparent, however, that this finding of waiver was predicated upon the Court's ultimate legal conclusion, which is submitted herein to be erroneous, that suppression is not mandated by the law. The legal conclusion of the Court that suppression was not warranted is

CONCLUSION

The Petition for Writ of
Certiorari should be granted.

Respectfully submitted,

EDWARD A. RUDLEY
Counsel for Petitioner

OF COUNSEL:

Joseph Mellace

presently ripe for review, however,
because of the possibility of further
post-conviction relief action founded
upon the Petitioner's former attorney's
failure to make a timely Motion to
Suppress.

A1

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Crim. 83-5267

UNITED STATES OF AMERICA

v.

THOMAS JOSEPH DECARLO

JUDGMENT AND PROBATION/COMMITMENT ORDER

(O)n this date, April 8, 1983...
(t)here being a verdict of guilty.
Defendant has been convicted as charged
(of all counts)... On counts 1-11 -
five (5) years on each count; In
addition, it is further Ordered that
the defendant pay a fine of \$10,000.00
on each count.; It is further Ordered
that the sentence imposed on counts
1-11 run concurrent with each other;
The total sentence is five (5) years
& \$10,000.00.

A2

/s/ STANLEY S. BROTMAN, 3rd
United States District Judge

A3

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-5267

UNITED STATES OF AMERICA

v.

THOMAS JOSEPH DECARLO,
Appellant

On Appeal from the United States District
Court for the Eastern District of
New Jersey
(Crim. No. 82-00394-01)
(Honorable Stanley S. Brotman)

Submitted Under Third Circuit Rule 12(6)
February 27, 1984

Before: ADAMS, SLOVITER, Circuit Judges,
and TEITELBAUM, District Judge*

*Honorable Hubert I. Teitelbaum, Chief
Judge, United States District Court for
the Western District of Pennsylvania,
sitting by designation.

JUDGMENT ORDER

After considering all contentions raised by appellant, namely, that (1) police officers searched two premises when the search warrant only indicated one premise to be searched; (2) Exhibits 1.1 and 1.5 were illegally seized under plain view doctrine and were erroneously admitted into evidence; and (3) the trial court erred in allowing evidence of other loans made by defendant in violation of Rule 404B, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

/s/ ARLIN M. ADAMS
Circuit Judge

ATTEST

/s/ SALLY MRVOS
Sally Mrvos, Clerk

Dated: February 28, 1984